STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**03/15/99**	Bill No:	**SB 329**
Tax:	**Property**	Author:	**Peace**
Board Position:	**Neutral**	Related Bills:	**SB 438 (Rainey)**

BILL SUMMARY:

This bill would establish special revenue allocation procedures for certain electrical generation facilities that are assessed by the Board of Equalization.

ANALYSIS:

Current Law:

Section 1 of Article XIIIA of the California Constitution, gives the Legislature the authority to determine the allocation of property tax revenues derived from the basic one percent property tax rate. The statutes setting forth the allocation methods for revenues differ depending upon whether they are derived from property assessed by the Board of Equalization (i.e., "state assessed" property) or county assessors (i.e., "locally assessed" property). These provisions are discussed in detail below.

The Board of Equalization's role with respect to the property taxation of state assessed property is limited to determining the value of the property. Values are set each year at current fair market value as determined by the Members of the Board of Equalization. Property tax bills are calculated and collected at the local level with the county auditor and tax collector each performing a separate function. The allocation of property tax revenue proceeds for both state and locally assessed property are performed by each of 58 county auditors. The State Controller audits the allocation and apportionment of property taxes made by county auditors.

Proposed Law;

This bill would provide that any "incremental revenue," as defined, from a "designated electrical generation facility," as defined, is to be allocated among jurisdictions in the county in the manner specified for property tax revenues subject to "county assessment." In effect, this means that the local agencies that comprise the tax rate area where the property is physically located will receive any revenue that is "incremental revenue." The significance of this declaration is that, generally, any growth in property tax revenues derived from state assessed property that is more than two percent over the prior year's revenues is shared with *all* local agencies located in the county rather than to just those few local agencies that comprise the tax rate area where the property is physically located.

A designated electrical generation facility is a facility "that has been purchased or [newly] constructed by a company that sells electricity." With respect to purchases, incremental revenue is the difference between the revenue derived from the allocated value of the facility in the year prior to its purchase (which, once determined, would remained fixed unless a subsequent "purchase" of the facility occurs) and the revenue derived from the value of the facility as annually determined by the Board thereafter. Thus, the amount of the incremental revenue, if any, would be distributed to the local agencies that comprise the tax rate area where the property is physically located.

With respect to any newly constructed electrical generation facility, the revenue derived from the value of the facility as annually determined by the Board would be allocated to the local agencies in the tax rate area where the property is sited. This revenue would not truly be an "increment" since the total amount of property tax revenues from the property would be distributed to the local agencies that comprise the tax rate area where the property is physically located.

Note these special allocation provisions only apply if the electrical generation facility is state assessed in the first instance.

Background:

Electrical Restructuring

As a result of the restructuring of the electric utility industry in California (AB 1890; Stats. 1996, Ch. 854), rate regulated public utilities are in the process of selling many of their electrical generation facilities. Public utilities are required to sell certain of their generation facilities, and are opting to sell other facilities voluntarily. In addition, the restructuring and subsequent opening of electrical generation to competition has resulted in the planned development and construction of many new electrical generation facilities across the state.

Article XIII, Section 19 of the California Constitution, provides that the Board of Equalization is to annually assess the property of companies selling or transmitting electricity. The Board has historically self-restricted its assessment jurisdiction to companies selling or transmitting electricity that were rate regulated and operating pursuant to a certificate of public convenience and necessity by the California Public Utilities Commission or comparable license from a regulatory agency. Property owned by other types of companies selling or transmitting electricity – co-generation facilities, small power generation facilities, and generation facilities using renewable energy resources – traditionally have been assessed by county assessors.

In 1998, fifteen electrical generation facilities previously owned by regulated public utilities and assessed by the Board of Equalization were sold to five non-regulated companies (now fifteen companies). Consequently, the Board of Equalization was faced with the immediate issue of whether or not it should continue to assess these facilities, and thereby assert assessment jurisdiction over these five companies and their property in California. The Board made an interim decision, for the 1999 tax year only, to continue to assess the fifteen facilities and begin to assess the property of five

companies. With respect to the Board's assessment jurisdiction over the property of companies selling or transmitting electricity in view of electrical restructuring for the long-term, the Board directed its staff to begin a series of meetings with interested parties to develop a regulation (Property Tax Rule 905) defining the Board's jurisdiction. Those discussions are in progress.

Property Tax Revenue Allocation

Prior to Proposition 13, each local government with taxing powers (counties, cities, schools, and special districts, etc.) could levy a property tax on the property located within their boundaries. Each jurisdiction determined their tax rate independently (within certain statutory restrictions). In total, the statewide average tax rate prior to Proposition 13 was 2.67 percent. After Proposition 13, the property tax rate was limited to a maximum of one percent of a property's assessed value.

Since local jurisdictions could no longer set their own individual tax rates and instead were required to share in a pro rata portion of the maximum one percent tax rate, the Legislature was given the authority to determine how the property tax revenue proceeds should be allocated. The legislation that established the current property tax allocation system, found in Revenue & Taxation Code §95 - §99.2, was Assembly Bill 8 (Stats. 1979, Chap. 282; L. Greene). The descriptive term for the allocation procedure for locally assessed property tax revenues is still commonly referred to as "AB 8," some twenty years later.

In addition to establishing allocation procedures, AB 8 also provided financial relief to local agencies to offset most of the property tax revenue losses incurred after Proposition 13. AB 8 provided relief in two ways: first, it reduced certain county health and welfare program costs and, second, it shifted property taxes from schools to cities, counties and special districts, replacing the school's lost revenues with increased General Fund revenues. (There were six counties - Alpine, Lassen, Mariposa, Plumas, Stanislaus, and Trinity – referred to as "negative bailout" counties, where the amount of property taxes allocated to the county was *reduced* because the health and welfare components of AB 8 were so favorable to those counties.)

In 1992, the Educational Revenue Augmentation Fund (ERAF), was established. ERAF partially reversed the relief provided to local agencies by AB 8. The effect of ERAF was to redirect a portion of property tax revenues previously allocated to cities, counties, and special districts to schools, thus reducing the state's General Fund obligations for funding schools under Proposition 98.

Locally Assessed Property. Generally, property tax revenues from locally assessed property are allocated by situs of the property and accrue only to the taxing jurisdictions[1] in the tax rate area where the property is located. A tax rate area is a grouping of properties within a county wherein each parcel is subject to the taxing powers of the same combination of taxing agencies.

State Assessed Property. Under current law, there are different allocation procedures for property tax revenues derived from state assessed property. This system was established by legislation enacted in 1986 via AB 2890 (Stats. 1986, Chap. 1457). Prior to the 1988-89 fiscal year, the property tax revenues from state and locally assessed property were allocated in the same manner – by tax rate area. However, the process of identifying property according to tax rate area had become overwhelming for state assessees. As a result, AB 2890 was enacted to simplify the reporting and allocation process for state assessees. It allowed state assesses to report their unitary property holdings by county, rather than by individual tax rate area. It additionally allowed the Board to allocate value by county, rather than by tax rate area. This change allowed state assessees to receive only one tax bill per county. Before the switch, each state assessee received hundreds of property tax bills from every county where they owned property because a separate tax bill had to be prepared for each tax rate area where property was physically located. Statewide there are currently 57,991 tax rate areas.

Essentially, AB 2890 established a prescribed formula, performed by the county auditor, that:

- Preserves each local agency's tax base (hereafter called the "unitary base") for any jurisdiction which had state assessed property sited within their boundaries in the 1987-88 fiscal year.
- Thereafter, annually increases each local agency's "unitary base" by two percent (provided revenues are sufficient).
- If after each local agency has been distributed their "unitary base" plus two percent, there is any property tax revenue remaining, then this surplus revenue, referred to as "incremental growth,"[2] is distributed to all agencies in the county. Agencies with unitary bases also receive a share of the incremental growth.
- "Incremental growth" revenues are shared with all jurisdictions in the county (i.e., county-wide distribution) in proportion to the entity's share of property tax revenues derived from locally assessed property.

---

[1] "Taxing jurisdictions" are those local entities – counties, cities, schools, and special districts, etc. – that are the recipients of property tax revenues. Prior to Proposition 13, each local entity was authorized to levy a property tax on property located within its boundaries. Each jurisdiction set its own tax rate (within certain statutory restrictions). After Proposition 13, the tax rate on property was limited to 1% and each jurisdiction was allocated a share of the revenue generated from the 1% tax rate.

[2] Note that the terms "incremental growth" and "incremental revenues," a term which this bill would create have different meanings.

- It is often stated that all state assessee revenue is shared "county-wide," but this is not technically true. In essence, it is only incremental growth that is distributed "county-wide" without regard to where the growth in value took place or where new construction occurred.
- By establishing unitary bases, jurisdictions were held harmless by the allocation system established by AB 2890 and some jurisdictions (those who had little or no state assessed property located in their jurisdictional boundaries prior to AB 2890) have since benefited from the county-wide system established for sharing the incremental growth.

Special Situations; Local Agencies Created After 1988 and ERAF.

Local agencies that did not exist prior to 1988, which would include ERAF, have a unitary base of *zero*.

- These local agencies may, however, still receive a share of state assessee revenues. But their share would consist only of a portion of the county-wide incremental growth pool, if any, since they have no "unitary base."
- Once a local agency is granted a portion of the county-wide pool, they are thereafter annually guaranteed some amount of state assessee revenues.
- In some instances, local agencies and *ERAF receive no property tax revenues* from state assessed property. This occurs when:
  - The local agency was not in existence prior to 1988 and;
  - Since the local agency's formation, there has not been a year where there were sufficient revenues to give those local agencies who received property tax revenues in the prior year their previous year's share plus two percent.

Comments:

1. **Sponsor and Purpose.** This bill is sponsored by the author in an effort to ensure that the revenue allocation procedures for state assessed property will not hinder a community's decision to site a new electrical generation facility. The situs jurisdictions carry the burden of providing governmental services to the facility and bear any environmental impact. By ensuring these jurisdictions receive the revenue from the project, it will lessen communities opposition to siting certification. In addition, with respect to those existing generation facilities purchased, situs based jurisdictions will be allocated any growth in the property's value and the current revenue allocations to non-situs based jurisdictions will remain at their current level (i.e., their share of revenue from plants located elsewhere in the county will effectively be frozen hereafter).
2. **This bill would treat the revenue allocation from newly constructed facilities the same whether the property is subject to state or local assessment.** The allocation of revenue proceeds from *any* newly constructed facility whether it is state assessed (by the provisions of this bill) or locally assessed (by the provisions of

existing law) would be allocated only to the local agencies in the tax rate area where the property is sited. Thus, this bill would render moot the issue of situs-based revenue allocation if the Board adopts a regulation that changes the assessment jurisdiction of any newly constructed electrical generation facility from local to state assessment.

3. **The Legislature has established the precedent of situs-based revenue allocations for certain post-AB2890 newly constructed state assessee properties.** The Legislature has approved three exceptions (§100(i)[3], (j)[4], and (k)[5]) to the revenue allocation system for state assessed property established by AB 2890. Those exceptions ensured that, for three specific projects that were to be constructed by public utilities, the revenues from the projects would essentially be allocated as if they were subject to assessment by the county assessor. Thus, the property tax revenue derived from these proposed projects (only two of the three projects were subsequently constructed) would go to the jurisdictions in the tax rate area where the project was to be sited rather than being shared with all jurisdictions located in the county as "incremental growth." With respect to the new construction provisions, this measure establishes similar procedures for electrical generation facilities already granted to other major projects.

4. **The provisions of this bill would only apply to the revenue allocation of generation facilities that are ultimately subject to assessment by the Board of Equalization.** As currently drafted, this bill would not address revenue allocation in the following instances:

- The move of any existing electrical generation facility *from* state assessment *to* local assessment. (When this occurs, situs-based jurisdictions will effectively receive property tax revenue allocations twice from the same property, as discussed below.)
- The move of an existing electrical generation facility from local assessment to state assessment *when there has been no change in ownership* of the property.

5. **The following implementation issues are listed for consideration and clarification.**

- The term "new construction" is not defined. Does this bill intend to only apply to entirely new plants at new sites? The term "new construction," in the case of locally assessed property, has distinct meaning and applies to partial improvements (for example, a room addition). Some electrical generation plants recently purchased will be fully or partially rebuilt on the same site. A definition limiting the special value and revenue allocation procedures to entirely new plants would greatly ease the administrative complexities of property valuation and revenue allocation related to "partial" new construction.

[3] A computer center in the City of Fairfield (Pacific Bell).
[4] An education and training center in the City of Livermore (PG&E).
[5] For a proposed power plant in the City of Chula Vista (SDG&E), which was subsequently never constructed.

- The term "purchase" is not defined. Some generation facilities will be spun off by their public utility owner to a wholly owned subsidiary. Does this bill intend to change the revenue allocation in this situation?

6. **Local agencies with generation facilities sited in their boundaries built prior to 1988 may receive a double-dipping of property tax revenues if those facilities become locally assessed.** These local agencies currently receive a proportionate share of property revenue from the property since it is incorporated into each agency's "unitary base." If generation facilities move from state assessment to local assessment (a situation that this bill does not address) then without adjusting these local agencies pre-1988 unitary bases, they will essentially receive property tax revenues for the same property twice.

7. **The following amendments are suggested from the perspective of the Board of Equalization's administrative functions.** The County Auditors' Association or the State Controllers' Office may offer additional or differing amendments which address their implementation issues from their perspective of property tax revenue allocation. (Items in bold would benefit from definition or clarification depending upon the author's intent).

> 100.02.(a) Notwithstanding any other provision of this article, for the 1999-2000 fiscal year and each fiscal year thereafter, those incremental revenues derived in a county from the application of the tax rate specified in paragraph (1) of subdivision (b) of Section 100 to the assessed value of ~~qualified~~ designated[6] electrical generation facilities shall be allocated among jurisdictions in the county by the county auditor[7] in the manner specified by this chapter for ad valorem property tax revenues as if that property were subject to assessment by the county assessor[8] ~~derived from county assessments~~.
>
> (b) "Designated electrical generation facility" means an electrical generation facility that has been ***purchased*** or **newly[9] constructed** by a company that intends to sell~~s~~ electricity.
>
> (2) "Incremental revenues" means both of the following:
>
> (A) In the case of a ~~qualified~~ designated electrical generation facility that obtained that status by purchase, the excess of the ad valorem property tax revenues derived from the application of the tax rate specified in paragraph (1) of subdivision (b) of Section 100 to the assessed value of that facility over the corresponding amount of ad valorem property tax revenue so derived from the allocated assessed

[6] To avoid confusion with "Qualifying facilities" which has specific meaning (QF's) the term "designated" as used herein is preferred.
[7] Since this bill requires functions to be performed by two governmental bodies, the Board of Equalization and county auditors, this would clarify that the county auditor is the person to perform this function.
[8] Consistency with drafting style of §100(i) and (k).
[9] Technical correction for accuracy.

value of the facility as determined by the State Board of Equalization[10] with respect to that facility for the last full assessment year prior to the obtaining purchase. Where a designated electrical generation facility was purchased from a public utility, the public utility from which the property was purchased shall, at the request of the Board, provide information to assist the Board in determining the allocated assessed value of that facility.[11]

(B) In the case of any designated ~~qualified~~ electrical generation facility newly constructed ~~not described in subparagraph (A)~~,[12] the total amount of ad valorem property tax revenues derived from the application of the tax rate specified in paragraph (1) of subdivision (b) of Section 100 to the assessed value of that facility.

(c) For the purpose of calculating the amount of the incremental revenue for a designated electrical generation facility that has been purchased, the Board shall furnish the applicable county auditor with:

(1) The allocated assessed value, by tax rate area, of each facility located in that county for the last full assessment year prior to the purchase.

(2)The allocated assessed value, by tax rate area, for each designated electrical generation facility located in that county that is determined annually by the Board.

(d) For the purpose of calculating the incremental revenue for a designated electrical generation facility that has been newly constructed, the Board shall annually furnish the applicable county auditor with the allocated assessed value, by tax rate area, for each facility located in that county.

8. **The March 15 amendments reframe this bill in terms of revenue allocation rather than assessment jurisdiction.** This bill, as introduced, would have given county assessors assessment jurisdiction over electrical generation facilities, including power plants, cogeneration facilities, and new generation facilities purchased or constructed after January 1, 1997, by an entity other than a regulated public utility company.

COST ESTIMATE:

Pending.

[10] These facilities were part of unitary assessments that encompassed all the property owned by the public utilities. The Board will be required to estimate the allocated assessed value for each facility.

[11] Because AB 2890 changed property value allocation procedures and state assessees are valued on a unitary basis the Board does not have the information needed to make these allocations for each individual facility without the assistance of the prior owner.

[12] It is not clear what type of "generation facility not described in subparagraph (b)" could be other than facilities newly constructed.

REVENUE ESTIMATE:

Background, Methodology, and Assumptions

The California Constitution requires the State Board of Equalization to annually assess the property, other than franchises, of a company transmitting or selling gas or electricity. The Board allocates state-assessed unitary values to a single countywide tax rate area in each county where the assessee has property. Statutory formulas are used to allocate taxes from the countywide tax rate area to the numerous local agencies in the county. Revenue for locally assessed property, on the other hand, is distributed to the local agencies whose boundaries contain the location of the particular property.

With the deregulation of the electrical industry in California, nearly all fossil-fuel electricity generating assets will have been divested by electric utilities by the end of 1999. Plans for the construction of several new power plants have been announced by non-utility power producing companies. Under this proposal, the property tax revenues for these new plants and for the incremental value of the plants that were divested by the electric utilities would be allocated in the same manner as county-assessed property.

Revenue Summary

This proposal should not affect total property tax revenues but would shift future property tax revenues among local jurisdictions in counties with these electrical generation facilities.

Analysis prepared by:	Rose Marie Kinnee	445-6777	04/13/99
Revenue prepared by:	Aileen Takara Lee	445-0840	
Contact:	Margaret S. Shedd	322-2376	

gjm

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.